

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 5729 OF 2022***

X, through her father ..Petitioner  
Versus  
The State of Maharashtra & Anr. ...Respondents

Ms. Madhuri R. Raibagkar for the Petitioner.

Mr. P. P. Kakade, G.P. a/w Mr. R. P. Kadam, A.G.P for the Respondent–  
State

**CORAM : REVATI MOHITE DERE &  
MADHAV J. JAMDAR, JJ.**  
**DATED : 6<sup>th</sup> MAY 2022**

**P.C. :**

1. The Petitioner who is minor has filed the present petition through her father. The Petitioner is rape survivor of 16 years and 7 months. In the petition, relief is sought to allow the Petitioner to undergo medical termination of pregnancy and also compensation as per the provisions of law.

2. By order dated 4<sup>th</sup> May 2022, we directed the Dean of Sir J.J. Group of Hospitals to constitute a medical board in terms of the Medical Termination of Pregnancy Act, 1979 (“**the said Act**”). The medical board so constituted was directed to submit report before this Court on 6<sup>th</sup> May 2022. On 6<sup>th</sup> May 2022, report of medical board of J. J. Hospital submitted to this Court. The said report is set out hereinbelow for ready reference:-

“AFTER CAREFUL CLINICAL EXAMINATION AND PERUSAL OF ULTRASONOGRAPHY REPORT AND PSYCHIATRIC EVALUATION, THE COMMITTEE HAS COME TO THE OPINION THAT AT PRESENT NO ABNORMALITY HAS BEEN DETECTED IN THE FOETUS OR THE PREGNANT MINOR MOTHER.

SINCE THE PREGNANCY HAS ADVANCED TO 29 WEEKS OF GESTATION, WHICH IS WELL BEYOND THE LEGAL LIMIT FOR TERMINATION OF PREGNANCY I.E. 24 WEEKS, THE MINOR AND HER PARENTS HAVE APPEALED FOR THE PERMISSION OF TERMINATION OF PREGNANCY FROM THE HONORABLE HIGH COURT.

DESPITE THIS BEING AN ADVANCED PREGNANCY, THE PATIENT HAS NOT YET DEVELOPED ANY MEDICAL OR OBSTETRIC COMPLICATIONS, THE RISK OF TERMINATION OF

PREGNANCY TO THE MOTHER REMAINS SAME AS THAT OF DELIVERY AT TERM FROM THE OBSTETRIC POINT OF VIEW. PATIENT IS MENTALLY SOUND. SHE & HER FATHER ARE WELL AWARE OF BOTH THE TERMINATION AS WELL AS CONTINUATION OF PREGNANCY.

THE TERMINATION OF THE PREGNANCY AT THIS TIME (BABY WEIGHT ALMOST 1.5 KGS) WILL RESULT IN A PRETERM VIABLE BABY REQUIRING INTENSIVE CARE MANAGEMENT. A RELATIVE WILL ALWAYS BE REQUIRED TO BE PRESENT IN THE HOSPITAL DURING THE PROLONGED STAY OF BABY IN HOSPITAL. THIS WILL IN TURN INCREASE THE RESPONSIBILITY OF THE FAMILY AND ADD TO THE BURDEN OF HOSPITAL CARE. IN ADDITION, IF THE CHILD SURVIVES THE INTENSIVE CARE, THERE IS A LIKELIHOOD OF SEVERE LIFELONG MORBIDITIES TO THE NEW BORN, WHICH CAN BE AVOIDED IF THE BABY IS DELIVERED NEAR TERM.

HENCE IT IS ADVISABLE TO CONTINUE THE PREGNANCY AND TO TERMINATE THE PREGNANCY AT OR NEAR TERM AS THE OUTCOME OF THE BABY WILL BE BETTER THEN. HOWEVER, THE FINAL PLACEMENT OF THE NEWBORN CHILD POST DISCHARGE IS BEYOND THE PURVIEW OF

THIS COMMITTEE.”

3. The medical board has submitted unanimous report. The medical board constituted by the Sir J. J. Group of Hospitals, Mumbai was consisting of Associate Professor of Department of Obstetrics and Gynecology, Associate Professor of Department of Psychiatry, Associate Professor of Department of Paediatrics and Associate Professor of Department of Radiology. The unanimous opinion of the medical board inter alia records following aspects:

- (i) Pregnancy has progressed upto the advanced stage of 29 weeks of gestation,
- (ii) There is same risk to the life of the mother as of normal term delivery
- (iii) No abnormality is found in the foetus
- (iv) The weight of baby is almost 1.5 kgs and therefore, termination of pregnancy at this stage will result in a preterm viable baby requiring intensive care management and there is likelihood of severe life-long morbidities to the new born. The same can be avoided if the baby is delivered near term.

Thus it is clear that there is high probability of baby being born alive. If the termination of pregnancy is allowed at this stage, then there is high probability of delivery of live baby, however as a result of premature delivery, the baby will suffer from severe life long morbidities.

4. In view of the aforesaid unanimous opinion of the medical board of the Sir J. J. Hospital, we are not inclined to grant relief of termination of pregnancy. However, in view of the peculiar facts and circumstances of this case, certain further directions are required.

5. The father of the Petitioner is daily wage earner. The Petitioner's mother expired long back. There is nobody in the house of the Petitioner to look after her in this critical situation. We have interacted with the Petitioner on phone and she expressed that she is interested in pursuing her education and except her father, there is no other member in her family to look after her. The Petitioner's father is daily wage earner and therefore, has to go out everyday for long duration. We have also interacted with the

father who is present in Court. We have also informed them about the various aspects of the report of the medical board. They also agreed to continue with the pregnancy.

6. In view of the above peculiar aspects and in the light of the various provisions of the Protection of Children from Sexual Offences Act, 2012 and the Protection of Children from Sexual Offences Rules, 2020, we issue the following directions:-

- i. We direct the State Government to take steps to admit Petitioner in Vatsalya Trust, Kanjurmarg till her delivery and for further necessary period.
- ii. We also direct the District Legal Services Authority, Thane to depute a volunteer who will frequently visit the Petitioner.
- iii. The authorities of Vatsalya Trust, Kanjurmarg to provide all necessary facilities to the Petitioner and to take steps to admit her to Government/MCGM Hospital at the time of delivery.
- iv. Since the Petitioner is victim of sexual assault, we also issue the following directions:-
  - (a) The Respondent No.1-State to immediately place on record the

F.I.R., medical report and other papers including the statement of minor-girl recorded under Section 161 as well as 164 Code of Criminal Procedure before the District Legal Services Authority (DLSA), for payment of compensation to the petitioner, under the Government Resolution (GR) dated 1st August, 2017, i.e. Manodhairya Scheme.

- (b) On receipt of the papers, DLSA is directed to immediately process the said papers for payment of compensation to the petitioner, as contemplated under the said Scheme. DLSA to ensure that the said payments are made at the earliest and as expeditiously as possible.
- (c) The petitioner is also at liberty to apply before the learned Special Judge under Rule 9 of the POCSO Rules. It is also open for the learned Special Judge to decide the interim compensation on his own motion, under the said Rules. If such an application is made or if the learned Special Judge deems it appropriate, the learned Judge to consider granting interim compensation under Rule 9 of the POCSO Rules, as expeditiously as possible.

- (d) We also direct the State Government to deposit an amount of Rs.50,000/- (Rupees Fifty Thousand only) in the petitioner's account. The details of the bank account of the petitioner be furnished forthwith by the learned counsel for the petitioner to the learned Government Pleader, so that the said amount can be disbursed expeditiously and in any event within ten days from today.
- (e) Needless to state that, the Authorities/Special Judge shall bear in mind, the compensation awarded under the various schemes to the petitioner and also by this order, whilst considering grant of interim/final compensation.
7. Stand over to 6<sup>th</sup> June 2022 (HOB) (In Camera).
8. Liberty to apply before the Vacation Court, if occasion so arises.
9. All concerned to act on an authenticated copy of this order.

**MADHAV J. JAMDAR, J.**

**REVATI MOHITE DERE, J.**